

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EDWARD KING,

Plaintiff,

vs.

KAYE ADKINS, et al.,

Defendants.

NO. CV-06-105-RHW

ORDER DENYING MOTION FOR
RECONSIDERATION

BEFORE THE COURT is Plaintiff's *pro se* letter dated December 13, 2006, which the court liberally construes as a Motion for Reconsideration (Ct. Rec. 12). This case was closed by Order filed November 7, 2006. Plaintiff asserts, because he did not proceed *in forma pauperis* in this action, there is no authority to count the dismissal for failure to state a claim upon which relief may be granted under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1), as a strike under 28 U.S.C. § 1915(g).

This court is allowed, under Fed. R. Civ. P. 60(b), to reconsider and amend a previous order in narrow circumstances. A litigant may seek relief from an order or judgment based on: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered before the court's decision; (3) fraud by the adverse party; (4) the judgment

1 is void; (5) the judgment has been satisfied; or (6) any other reason
2 justifying relief. Fed. R. Civ. P. 60(b). "[T]he major grounds that
3 justify reconsideration involve an intervening change of controlling
4 law, the availability of new evidence, or the need to correct a clear
5 error or prevent manifest injustice.'" *Pyramid Lake Paiute Tribe of*
6 *Indians v. Hodel*, 882 F.2d 364, 369 n. 5 (9th Cir. 1989)(quoting 18 C.
7 Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 4478).

8 Here, there is no basis for reconsideration. Plaintiff's
9 assertion that his payment of the filing fee in this action precludes
10 a dismissal which may count as one of the dismissals under 28 U.S.C. §
11 1915(g) is misinformed. Dismissal of this action was pursuant to 28
12 U.S.C. § 1915(e)(2) which specifically provides: "Notwithstanding any
13 filing fee, or any portion thereof, that may have been paid, the court
14 shall dismiss the case at any time if the court determines that . . .
15 (B) the action or appeal -- (i) is frivolous or malicious; (ii) fails
16 to state a claim on which relief may be granted" 28 U.S.C. §
17 1915(e)(2)(B). The court found Plaintiff's allegations failed to
18 state a claim upon which relief may be granted.

19 Plaintiff is advised, although the screening provisions of the
20 Prison Litigation Reform Act of 1995, apply to all litigation brought
21 by prisoners, see 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1), the
22 preclusive language of 28 U.S.C. § 1915(g) will apply only to those
23 prisoners attempting to commence an action *in forma pauperis*. If
24 Plaintiff, as a prisoner, chooses to pay the filing fee for any future
25 action, he will not be precluded from doing so under 28 U.S.C. §
26 1915(g), but he will still be subject to the screening provisions of
27

1 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1). Should he wish to file a
2 future case *in forma pauperis*, the provisions of 28 U.S.C. § 1915(g)
3 MAY affect his ability to do so.

4 At this time, **IT IS ORDERED** Plaintiff's Motion for
5 Reconsideration (Ct. Rec. 12) is **DENIED**.

6 **IT IS SO ORDERED.** The District Court Executive is directed to
7 enter this Order, forward a copy to Plaintiff at his last known
8 address, and close the file.

9 **DATED** this 8th day of January, 2007.

10 *s/ Robert H. Whaley*
11 ROBERT H. WHALEY
CHIEF UNITED STATES DISTRICT JUDGE

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